

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GARY MCNEILL,

Plaintiff,

- against -

MR. MARCELLINO and SERENDIPITY
INPATIENT DRUG TREATMENT
PROGRAM,

Defendants.
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**REPORT AND
RECOMMENDATION**

10 CV 948 (JBW)

On November 17, 2010, the Court received a letter from plaintiff Gary McNeill, proceeding pro se, requesting a 60-day adjournment of the initial conference previously scheduled for November 18, 2010. The Court granted Mr. McNeill's request for an adjournment and Ordered the parties to appear for an initial conference on January 19, 2011 at 12:30 p.m. As Mr. McNeill's November 17, 2010 letter listed a return address at 2171 Madison Avenue, Apartment 9G, New York, NY 10037-2326, the Court forwarded its November 17, 2010 Order, granting plaintiff's request, to Mr. McNeill at both that return address and at the Five Points Correctional Facility, the address on file for plaintiff at the time.

The Court further Ordered Mr. McNeill, if still incarcerated, to appear by telephone for the January 19, 2011 Conference; otherwise, he was Ordered to appear in person. The Court also Ordered plaintiff to provide the Court with his current mailing address and telephone number by November 30, 2010. The Court has received no response from Mr. McNeill. The Court has received additional correspondence from defendant and has continuously forwarded all such correspondence and all rulings by the Court to Mr. McNeill.

Nevertheless, Mr. McNeill failed to appear at the Initial Conference on January 19, 2011. Since receiving Mr. McNeill's November 17, 2010 letter, the Court has heard nothing further from Mr.

McNeill.

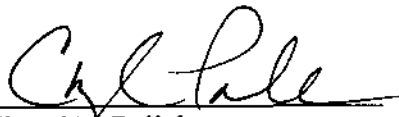
At the conference, Mr. Seep Varma, from the New York Therapeutic Communities, Inc., appeared on behalf of the defendant Serendipity Inpatient Drug Treatment Program. Mr. Varma indicated to the Court, on the record, that he has also not received any correspondence from Mr. McNeill, nor has he been contacted by the plaintiff since the suit was filed in February of 2010. Mr. Varma also brought to the Court's attention a letter that he had sent to Mr. McNeill, which had been returned by the Postal Service. The letter, dated October 21, 2010, was a copy of a letter from Mr. Varma to the Court, sent to Mr. McNeill at the Five Points Correctional Facility. The Facility, it appears, wrote the word "Released" on the envelope and forwarded the letter to Mr. McNeill at: "2171 Madison Avenue, Apt G, New York, NY 10037." The letter was ultimately returned to Mr. Varma with the indication: "Return to Sender; Refused; Unable to Forward." A copy of this letter and envelope have been added to the docket sheet on the Electronic Case Filing (ECF) system and will also be mailed to Mr. McNeill, along with this Order.

As neither the Court nor the defendants have been contacted by Mr. McNeill since his request for an adjournment, dated November 17, 2010, and since Mr. McNeill failed to appear for the Initial Conference, this Court respectfully recommends that if Mr. McNeill does not contact the Court by **February 7, 2011** to explain his absence, this case be dismissed for failure to prosecute.

The Clerk is directed to send copies of this Order to both parties by mail in addition to filing it electronically through the Electronic Case Filing (ECF) system.

SO ORDERED.

Dated: Brooklyn, New York
January 19, 2011


Cheryl L. Pollak
United States Magistrate Judge